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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Implementation of the Pay Telephone  
Reclassification and Compensation  
Provisions of the Telecommunications  
Act of 1996

CC Docket No. 96-128

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**COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY**

On June 6, 1996, the Commission released its Notice of Proposed Rulemaking (NPRM) in this docket, initiating its required implementation of new Section 276 of the Communications Act (47 U.S.C. § 276), enacted as part of the Telecommunications Act of 1996.<sup>1</sup> The Commission must take all actions necessary, including any reconsideration, to prescribe regulations implementing Section 276 by November 8, 1996.<sup>2</sup> Section 276 deals with the reclassification of Bell operating company (BOC) payphone assets from regulated accounts to unregulated accounts, as well as with the promulgation by the Commission of a plan that will provide fair compensation to all payphone providers for each and every call using their payphones.

Southwestern Bell Telephone Company (SWBT) hereby submits these Comments in response to the questions posed by the Commission in the NPRM. These Comments supplement the Comments of the "RBOC Coalition," of which SWBT is a member. SWBT supports the

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<sup>1</sup>Pub. L. No. 104-104. 110 Stat. 56 (1996).

<sup>2</sup>Section 276(b)(1).

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positions detailed in the Coalition filing in most major areas, with one major exception: the application of the statutory mandate of fair per call compensation<sup>3</sup> to local sent-paid (or coin) calls. While the Coalition states its position that the competitive nature of the payphone marketplace dictates the conclusion that the market, not regulation, should determine the local coin rate, three members of the Coalition are willing to suggest a transitional approach that is not statutorily-supported for the establishment of those rates. In the Coalition Comments, SWBT's dissent from that compromise approach is noted. These Comments provide in detail SWBT's position that both the language of Section 276 and the status of competition in the payphone marketplace dictate that the pricing of payphone calls, including local sent-paid calls, should be market-driven.

SWBT will also provide brief comments clarifying its differences from Coalition positions with respect to funding of public interest payphones, compensation for incoming calls to payphones, and directory assistance calls from payphones.

**I. COMPENSATION FOR LOCAL SENT-PAID CALLS [NPRM, ¶¶ 19-22]**

In passing the Telecommunications Act of 1996 (the Act), Congress expressly intended to "promote competition among payphone service providers."<sup>4</sup> Congress further required payphone service providers (PSPs) to be "fairly compensated for each and every completed intrastate and interstate call."<sup>5</sup> The promotion of competition and the assurance of fair compensation for each completed call should therefore be the twin, congruent guiding stars of this proceeding.

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<sup>3</sup>Section 276(b)(1)(A).

<sup>4</sup>Section 276(b)(1).

<sup>5</sup>Section 276(b)(1)(A).

Deregulation of payphone rates, including local sent-paid rates, is consistent with the deregulatory purpose of the Act. Throughout the Act, Congress has directed the Commission to rely on private negotiations to set standards and rates, subject to regulatory intervention only where that private negotiation fails. In the absence of some showing that the private market solution fails in the local coin call context, there is no reason to permit or require regulation. Section 276 places the Commission in the primary role as guarantor that compensation for all calls be "fair and reasonable."<sup>6</sup> Because what the open market produces is fair and reasonable by definition, the market price is the rate that the Commission should allow to prevail.

The Coalition Comments provide statistics concerning competitive payphone penetration, demonstrating that the coin payphone market is structured to operate competitively. In addition, other sources of telecommunications services, most notably cellular service, introduce market discipline to the payphone industry as well. Wireless telephony prices continue to fall, while penetration rates continue to rise. Thus, the ability of many customers to switch from using payphones to using wireless phones severely limits the pricing discretion of PSPs. Also, customers

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<sup>6</sup>In this respect, Section 276 stands in stark contrast to other sections of the Act. For example, Section 251 requires the Commission to "implement" the requirement that interconnection rates be "just, reasonable, and non-discriminatory," but places the *states* in the dominant role. Specifically, Section 251 provides that the specific terms of competitive entry will be set by private negotiations subject to "determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment . . . ." Section 251(a). State commissions, moreover, are responsible for approving, mediating, and arbitrating interconnection agreements. Section 252(e), (a)(2), (c). The Commission's presence is in the background, and the Commission is barred from supplanting state regulations that are in keeping with the Act's requirements. Section 252(e)(5), (d)(3). Section 276 is very different. It requires the *Commission* to "prescribe regulations that . . . ensure that all payphone service providers are fairly compensated *for each and every completed intrastate and interstate call using their payphone. . . .*" The states are not mentioned in Section 276 except for an express provision authorizing preemption: "To the extent any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt the State." Section 276(c).

have no obstacles in the way of making price comparisons. Although long distance carriers sometimes succeed in obscuring the price of their service until the bill arrives, the pricing of local coin calls is transparent: a customer can hardly fail to realize how many coins must be dropped into a payphone slot before placing a call. Finally, the highly elastic nature of demand for local calling makes any attempt at supra-competitive pricing foolish. A customer's decision to make a local payphone call is often a function of whether he or she has sufficient change. If the call is too expensive, customers often will forego the call entirely. Few opportunities exist for price "gouging" in markets where demand is so highly elastic.

Since, as described above, local payphone service is a market in which customers are not compelled to "buy," the market will efficiently determine the level of "fair" compensation. In fact, based on precisely such an analysis, national regulators in the United Kingdom refrain from regulation of the payphone industry throughout that country. The same result is appropriate in this country.

However, traditional local price regulation by state commissions can and often does push compensation levels below any level that could be considered "competitive" or "fair."<sup>7</sup> See, NPRM, ¶22, fn. 64. Many states have established below-cost local sent-paid rates and have required RBOCs to subsidize those rates through revenues from other telephone operations.<sup>8</sup>

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<sup>7</sup>States have also, in many instances, regulated the price a private payphone provider can charge for a local call by conditioning the provider's purchase of a line from the local exchange carrier (LEC) on the private provider's charging no more than the LEC is permitted to charge for a local sent-paid call.

<sup>8</sup>"Local sent-paid payphone rates" should not be confused with local rates for telephone exchange service, which are undeniably within the regulatory jurisdiction of a state commission. By contrast, independent PSPs have always been customers of local telephone exchange providers, purchasing a local loop at the tariffed rate established by the state commission. With the

The Act now prohibits RBOC PSPs from subsidizing the cost of local sent-paid calls from revenues from their telephone exchange service operations or their exchange access operations. In order to maintain or expand current levels of payphone deployment, consistent with the goals of the Act<sup>9</sup> and with the public interest, an increase in below-cost rates is unavoidable. The Commission should act to deregulate payphone rates -- thus permitting the market to set "fair" compensation -- so that the Congressional vision of a fully-competitive payphone marketplace can be achieved.

The NPRM, at paragraphs 21-22, lists three options that the Commission might utilize in order to achieve fair compensation: (1) a nationwide local coin rate; (2) national guidelines to be used by states in setting local rates; and (3) continuation of state regulation with a complaint or petition process to provide PSPs with recourse if a state commission fails to set rates that amount to fair compensation. Unfortunately, none of these options would result in *either* full competition *or* fair compensation.

Costs and revenues vary widely among payphone equipment types and payphone locations. A rate that provides fair compensation for a certain equipment type or location may not provide fair compensation for others. Additionally, the cost of living can vary widely among various regions of the United States. A single, national payphone rate for local traffic would thus be inefficient -- too high in some locations, too low in others. Payphones with higher than average costs and/or

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deregulation of RBOC payphone service, RBOC payphone operations will also be responsible for the charges associated with the local loop. In the NPRM, ¶ 50 and fn. 151, the Commission states that private payphone owners have been established to be end users responsible for payment of a subscriber line charge, not carriers responsible for a carrier common line charge.

<sup>9</sup>Section 276(b)(1).

lower than average revenues would be likely targets for removal, thus thwarting the Congressional goal of widespread deployment of payphones.

National guidelines would be likely to perpetuate the current system of regulation. National guidelines would be likely to establish methodologies for rate proceedings to be carried out by the states, presumably with the objective of setting rates for local sent-paid calls that recover the costs attributable to such calls. Such rates, though possibly not improperly subsidized, still may bear little or no resemblance to the rates that the market would set. Ratemaking proceedings have no place in a deregulated, competitive industry -- and, in requiring that all costs as well as revenues of RBOC payphone operations be removed from regulated books and entered into unregulated books, Congress has clearly established that the payphone industry is to be deregulated.

The third option mentioned by the NPRM -- continuation of state regulation with some system of checks in the event that fair compensation does not result -- is inappropriate for the same reasons as those discussed with respect to the second option. Continued rate regulation is inefficient and unnecessary in a competitive environment.

The Joint Explanatory Statement of the Committee of Conference establishes that Congress intended that the passage of Section 276 effect a change in compensation provided to PSPs, as follows:

In place of the existing regulatory structure, the Commission is directed to establish a *new system* whereby all payphone service providers are fairly compensated for *every* interstate and *intrastate* call made using their payphones . . . In crafting implementing rules, the Commission is not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act. [emphasis added].<sup>10</sup>

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<sup>10</sup>Report 104-458, at 158. This language described the House Amendment with respect to payphones; the Conference agreement adopted the House provision with only slight amendment.

A "new system" does not imply perpetuation of the old system of state regulation, even with "national guidelines" or "a complaint or petition process" thrown in. Deregulation of payphone rates, effective with the classification of RBOC payphone operations as a nonregulated activity, is the solution that fulfills the Congressional intent of fair compensation in a fully competitive marketplace.

## **II. PUBLIC INTEREST PAYPHONES [NPRM, ¶¶ 76-82]**

Section 276 (b)(2) of the Act provides that the Commission "shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained." The NPRM requests comment on the definition of "public interest payphones" and on the appropriate funding mechanism.

The Joint Explanatory Statement, in explaining this provision, stated that public interest payphones refer to "payphones at locations where payphone service would not otherwise be available as a result of the operation of the market. Thus, the term does *not* apply to a payphone located near other payphones, or to a payphone that, even though unprofitable by itself, is provided for a location provider with whom the payphone provider has a contract."<sup>11</sup> Congress has drawn a clear distinction between payphones supported by market-based pricing and public interest payphones, which are supported by public policy but not by the working of the marketplace.<sup>12</sup>

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<sup>11</sup>Report 104-458, at 159. This language described the House Amendment with respect to payphones; the Conference agreement adopted the House provision with only slight amendment.

<sup>12</sup>Section 276 allows the Commission to issue regulations that deregulate RBOC payphone operations and that permit all payphone providers to compete on the basis of price. Section 276 also allows the Commission to issue regulations permitting RBOCs to remove payphones that are

SWBT recognizes that there may be instances and circumstances in the states that it serves where public interest payphones are required. SWBT will provide and maintain payphones that are determined by the states to be public interest payphones. However, in light of the pro-competitive nature of the Act, and since no subsidies will exist any longer to support non-economical payphones, the Commission must establish rules that provide for fair compensation to PSPs for providing such payphones. Fair and equitable funding could be achieved if the entity requesting a public interest payphone, presumably a state or local government entity, obtains bids from PSPs and funds the service, as suggested by the Coalition Comments. SWBT would also support a decision by the Commission to allow states to establish other competitively-neutral funding mechanisms for public interest payphones.

### **III. COMPENSATION FOR INCOMING CALLS [NPRM, ¶ 15]**

While compensation for incoming calls to a payphone was not specifically mentioned in the NPRM, such compensation is contemplated by the language of the Act requiring compensation for each and every completed call using a payphone. SWBT agrees with the position presented in the Coalition Comments with respect to compensation for incoming calls when technology permits such charging. However, the Coalition Comments did not specify the party that should pay for incoming calls. Since the end user receiving the call makes the decision whether to answer the payphone and to accept the call, the end user, and not the carrier delivering the call, should be responsible for paying for the call, either by depositing coins or by alternately billing the call.

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unprofitable after transfer from the regulated to unregulated books, or after the loss of subsidies.



#### **IV. DIRECTORY ASSISTANCE CALLS FROM PAYPHONES [NPRM, ¶ 19]**

The Commission correctly observes, at paragraph 19 of the NPRM, that many jurisdictions prohibit PSPs from charging an end user for "411"<sup>13</sup> directory assistance (DA) calls. Further, incumbent LECs often are not permitted to charge PSPs for DA calls made from their competitive payphones. Under the Act, PSPs must be compensated for each and every call completed using their payphones. In the case of DA calls, that compensation should ultimately be paid to the PSP by the end user, not by the LEC providing the service. It would be inequitable for the LEC both to pay per-call compensation to the PSP and to remain uncompensated for the costs of providing DA service.

#### **V. CONCLUSION**

Consistent with the two goals of the Act, the Commission must promulgate rules for payphone deregulation and compensation that promote a competitive marketplace and that provide PSPs with fair compensation on a per call basis for each and every call that uses a payphone. The option available to the Commission that fully accomplishes both goals is the immediate deregulation of payphone rates, including rates for local sent-paid calls. The transitional approach suggested by the Coalition is not statutorily-based and will not accomplish the Congressional intent expressed in the language of Section 276.

Furthermore, fair and equitable funding for public interest payphones could be achieved if the entity requesting a public interest payphone, presumably a state or local government entity,

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<sup>13</sup>While most local DA calls are dialed using the digits "411," those calls can also be dialed (home area code) 555-1212. Calls dialed in that manner are handled in the same manner as "411" calls.

obtains bids from PSPs and funds the service, as suggested by the Coalition Comments. Alternatively, the Commission might allow states to establish other competitively-neutral funding mechanisms for public interest payphones.

With respect to compensation to PSPs for incoming calls, when technology permits such charging, the end user who chooses to accept an incoming call, not the carrier delivering the call, should be responsible for paying for the call, either by depositing coins or by using a credit card.

Finally, under the Act, a PSP should be compensated by end users for local DA calls, not by LECs.

Respectfully submitted,

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July 1, 1996

CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing Comments of Southwestern Bell Telephone Company, in Docket 96-128, have been served this 1st day of July, 1996 to the Parties of Record.

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July 1, 1996

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